

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

JUDGE SULLIVAN
NOTESUCH RECORDS INC.,

Plaintiff

v.

DELLA FEMINA/ROTHCHILD/JEARY PARTNERS
and VALLEY NATIONAL BANCORP

Defendant

11 CIV 3650

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) VALLEY NATIONAL BANCORP d/b/a VALLEY NATIONAL BANK
455 Valley Road
Wayne, New Jersey 07470

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert A. Jacobs
Joanna R. Helferich
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, New York 10036
(212) 790-4500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT

Date: 05/27/2011

Maria Davino

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action

JUDGE SULLIVAN

UNITED STATES DISTRICT COURT

for the

Southern District of New York

NONESUCH RECORDS INC.,

Plaintiff

v.

DELLA FEMINA/ROTHCHILD/JEARY PARTNERS
and VALLEY NATIONAL BANCORP

Defendant

11 CIV 3659

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* DELL A FEMINA/ROTHCHILD/JEARY PARTNERS
902 Broadway, 15th Floor
New York, New York 10010

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert A. Jacobs
Joanna R. Helferich
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, New York 10036
(212) 790-4500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK
CLERK OF COURT

Date: 05/27/2011

Manatt Phelps & Phillips
Signature of Clerk or Deputy Clerk

Civil Action No. 11-cv-3659 (RJS)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NONESUCH RECORDS INC.,

JUDGE SULLIVAN

Plaintiff,

-against-

DELLA FEMINA/ROTHCHILD/JEARY
PARTNERS and VALLEY NATIONAL
BANCORP d/b/a VALLEY NATIONAL
BANK,

Defendants.

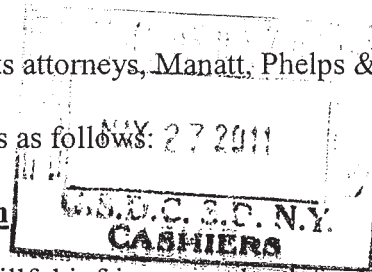
11 CIV 3659
Case No. 11-cv-03659-RJS

ECF CASE

COMPLAINT AND JURY DEMAND

Plaintiff Nonesuch Records Inc. ("Nonesuch"), by its attorneys, Manatt, Phelps & Phillips, LLP, as and for its Complaint in this action, alleges as follows:

Nature Of The Action



1. Nonesuch brings this action to address the willful infringement by defendants Della Femina/Rothchild/Jeary Partners ("Agency") and Valley National Bancorp d/b/a Valley National Bank ("VNB") of its exclusive rights in and to the Grammy-winning recording "Tighten Up" by the highly-acclaimed musical group The Black Keys ("Recording"). For at least a two week period in February 2011 coinciding with the period leading up to and the aftermath of the 2011 Grammy Awards, the Agency and VNB knowingly created and ran a television commercial incorporating significant portions of the Recording without having sought or obtained a license from Nonesuch to do so. The Agency and VNB compounded their wrongdoing by continuing to air the commercial even after they had received multiple letters asking them to stop running the commercial because it infringes the copyright in the Recording. This action is necessary to redress the Agency's and VNB's flagrant disregard and willful

infringement of Nonesuch's rights under the Copyright Act and to ensure that their misconduct is not repeated.

The Parties

2. Nonesuch, which has its principal place of business at 1290 Avenue of the Americas in New York City, is a company organized under the laws of Delaware and engaged in the business of, among other things, distributing and selling recorded music.

3. Agency is an advertising agency that is, upon information and belief, a partnership organized under the laws of the State of New York with its principal place of business at 902 Broadway, 15th Floor, New York, New York 10010.

4. VNB is, upon information and belief, a publicly-traded bank holding company organized under the laws of the State of New Jersey with its principal place of business at 1455 Valley Road, Wayne, New Jersey 07470. Upon information and belief, VNB owns and operates numerous bank branches in the State of New York, including in this District.

Jurisdiction and Venue

5. This action arises under the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.*

6. This Court has exclusive jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338 in that this action involves claims arising under the Copyright Act. This Court also has jurisdiction under 28 U.S.C. § 1332(a) as there is diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

7. This Court has personal jurisdiction over the Agency because the Agency regularly transacts business and has its principal place of business in the State of New York and because the claim at issue in this action arises from its activities in the state.

8. This Court has personal jurisdiction over VNB because VNB regularly transacts business in the State of New York and because the claim at issue in this action arises from its activities in the state.

9. Venue in this District is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in this District and because the Agency and VNB are subject to personal jurisdiction in this District.

Background

The Black Keys

10. The Black Keys is one of the most prominent “indie” musical groups in the United States. Known for its unique blues-infused rock sound, the group catapulted to mainstream prominence in 2010 with the release of its album “Brothers,” from which the Recording was the lead single.

11. “Brothers,” which has sold in excess of 735,000 copies to date, reached number one on Billboard’s charts for rock albums, alternative albums and digital albums and number three on Billboard’s top 200 chart. The album garnered multiple Grammy Award nominations, winning two, including the Grammy Award for Best Alternative Music Album.

12. The Recording has been a massive hit on its own. The official video of the Recording has registered nearly 9.5 million views on YouTube. The Recording reached number one on Billboard’s charts for top rock songs and top alternative songs and has sold more than 450,000 physical and digital copies to date. The Recording also earned a Grammy Award for Best Rock Performance By a Duo or Group with Vocals.

Nonesuch’s Rights In The Recording

13. Nonesuch is the exclusive licensee in the United States and Canada of all rights in the Recording, including, without limitation, the copyright in the work. The rights held by

Nonesuch include the right to grant or refuse to grant licenses for the use of the Recording in television commercials.

14. Non-party Rhino Entertainment Company (“Rhino”), a Nonesuch affiliate, administers Nonesuch’s rights in the Recording.

15. Nonesuch registered the copyright in all of the sound recordings embodied in the “Brothers” album, including the Recording, with the United States Copyright Office.

Nonesuch’s registration, number SR 669071, is effective as of October 6, 2010.

The Rights In The Musical Composition Embodied In The Recording

16. Non-party Wixen Music Publishing, Inc. (“Wixen”) is, upon information and belief, the exclusive worldwide administrator of the copyright in and to the musical composition embodied in the Recording (“Composition”).

17. Upon information and belief, the rights in the Composition held by Wixen include the right to grant or refuse to grant licenses for the use of the work in television commercials.

The Commercial At Issue

18. Upon information and belief, the Agency and VNB created or caused to be created and VNB approved a television commercial for VNB in which Gerald H. Lipkin, VNB’s Chairman, President and Chief Executive Officer, appears and makes a pitch on screen and key parts of the Recording are used as musical background (“Commercial”).

19. The Agency and VNB, both sophisticated commercial entities, knew that if they wanted to use the Recording in the Commercial, they would need a license to do so. They also knew that, if they used the Recording in the Commercial without first obtaining a license, the use would infringe the copyright in the Recording. Despite this knowledge, the Agency and VNB used the Recording in the Commercial without seeking or obtaining a license from Nonesuch to do so.

20. The Agency and VNB caused the Commercial to be broadcast repeatedly, including during major network programs such as the Today Show.

The Agency's and VNB's Refusal To Cease And Desist From Their Willful Infringement

21. Promptly after learning of the Commercial, Rhino, on Nonesuch's behalf, sent a letter to VNB demanding that all airings of the Commercial stop. Upon information and belief, VNB immediately shared the letter with the Agency and/or its attorneys.

22. Wixen also sent a letter to VNB demanding that all airings of the Commercial stop. Upon information and belief, VNB also immediately shared this letter with the Agency and/or its attorneys.

23. Despite the fact that VNB and, upon information and belief, the Agency received at least two different letters notifying them that the Commercial was an infringing use of the Recording and the underlying musical composition, VNB and the Agency continued to allow it to air, thereby compounding their wrongdoing.

24. The Agency's and VNB's conduct evinces a reckless and knowing disregard for Nonesuch's copyright interests in the Recording.

The Harm Caused By The Agency And VNB

25. The decision to grant or not grant a license for the use of a recording in an advertisement is multi-faceted. Among other considerations that factor into such decisions are (1) the amount of compensation offered; (2) the proposed use's likely effect on the market, including whether it will positively or negatively affect future demand for the use of the recording in question; and (3) whether the artist whose recording would be used wants to be associated with the product that the advertisement promotes. The more popular the recording at issue, the more important these considerations become.

26. Because the Recording is a major hit, the decision whether to allow its use in any advertisement requires an especially intensive analysis of the considerations outlined above. As a result of their misappropriation of the Recording, the Agency and VNB wrongfully deprived Nonesuch of the right and opportunity to conduct that analysis and to decide whether to allow them to use the Recording in the first place and, if so, on what terms. The Agency and VNB, thus, have caused Nonesuch to incur substantial injury, loss and damage as a result of their wrongdoing.

27. Separate and apart from the harm inflicted on Nonesuch, the Agency and VNB have earned significant income and profits from their infringing activity to which they are not entitled.

FIRST CLAIM FOR RELIEF

(Copyright Infringement Against All Defendants)

28. Nonesuch repeats and realleges each and every allegation contained in Paragraphs 1 through 27 of the Complaint as if fully set forth herein.

29. Nonesuch is and at all times has been, the exclusive licensee of, and/or entity authorized to, among other things, use, copy and exploit the Recording.

30. Nonesuch has never authorized the Agency, VNB or anyone working on their behalf to use, copy or exploit the Recording in the Commercial or otherwise.

31. Despite the fact that the Agency and VNB do not have any right to use, copy or exploit the Recording, they have used, copied and exploited the Recording for profit in the Commercial and thus have infringed Nonesuch's exclusive right to control the copyright in that work.

32. The Agency's and VNB's unauthorized acts constitute a deliberate and willful infringement of Nonesuch's exclusive rights in the Recording.

33. By reason of the Agency's and VNB's infringement, they, upon and information and belief, have derived significant income and profits and Nonesuch has sustained substantial injury, loss and damage, in an amount to be determined at trial, at Nonesuch's election.

SECOND CLAIM FOR RELIEF
(Injunctive Relief Against All Defendants)

34. Nonesuch repeats and realleges each and every allegation contained in Paragraphs 1 through 33 of the Complaint as if fully set forth herein.

35. If the Agency and VNB are permitted to continue copying and/or exploiting the Recording, Nonesuch will suffer injury that is not compensable through the award of money damages, and for which it has no adequate remedy at law.

Prayer for Relief

WHEREFORE, Nonesuch demands judgment as follows:

A. Permanently restraining and enjoining the Agency and VNB, their officers, agents, servants and employees, and all other persons in active concert and participation with them or acting on their behalf, and each of them, from copying or otherwise using or exploiting the Recording.

B. Awarding Nonesuch, at its election, either (i) actual damages and the profits derived by the Agency and VNB as a result of their infringing activities, or (ii) statutory damages in the maximum amount permitted under applicable law.

C. Directing that the Agency and VNB pay Nonesuch the costs of this action and their attorneys' fees herein;

D. Awarding Nonesuch pre-judgment and post-judgment interest on any monetary award; and

E. Granting Nonesuch such other and further relief as the Court may deem just and proper.

Respectfully Submitted

Dated: New York, New York.
May 27, 2011

MANATT, PHELPS & PHILLIPS, LLP

By: Joanna R. Helferich
ROBERT A. JACOBS
JOANNA R. HELFERICH
7 Times Square, 23rd Floor
New York, NY 10110
(212) 795-4500

Attorneys for Plaintiff
Nonesuch Records Inc.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Nonesuch Records Inc. hereby demands a jury trial of all issues so triable.

Dated: New York, New York.
May 27, 2011

MANATT, PHELPS & PHILLIPS, LLP

By: Joanna R. Helferich
ROBERT A. JACOBS
JOANNA R. HELFERICH
7 Times Square, 23rd Floor
New York, NY 10110
(212) 795-4500

Attorneys for Plaintiff
Nonesuch Records Inc.

JUDGE SULLIVAN

The JS-44 civil cover sheet and the information contained hereon, neither to be placed nor printed in the files and records of plaintiffs or other papers, as required by law, except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

11 CIV 3659

ATTORNEY ~~IS~~ KNOWN

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

☒ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

**IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1322, 1441)**

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

NONESUCH RECORDS INC.
1290 Avenue of the Americas
New York, New York
New York County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

DELLA FEMINA/ROTHCHILD/JEARY PARTNERS
902 Broadway, 15th Floor
New York, New York 10010
New York County

VALLEY NATIONAL BANCORP d/b/a VALLEY NATIONAL BANK
455 Valley Road
Wayne, New Jersey 07470
Passaic County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE 5/27/11

SIGNATURE OF ATTORNEY OF RECORD

Joanna R. Helfenil

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

☒ YES (DATE ADMITTED Mo. 3 Yr. 2005)
Attorney Bar Code #JH-2828

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NONESUCH RECORDS INC.,
JUDGE SULLIVAN
Plaintiff,

-against-

DELLA FEMINA/ROTHCHILD/JEARY
PARTNERS and VALLEY NATIONAL
BANCORP d/b/a VALLEY NATIONAL
BANK,

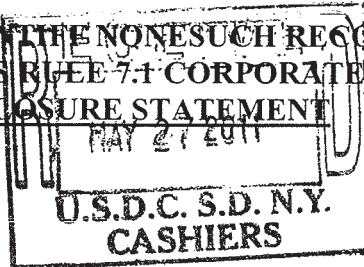
Defendants.

Civil Case No.: 11

CIV 3659

ECF CASE

**PLAINTIFF'S NONESUCH RECORDS
INC.'S RULE 7.1 CORPORATE
DISCLOSURE STATEMENT**



Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, the undersigned counsel certifies that Plaintiff Nonesuch Records Inc. is a wholly owned subsidiary of Warner Music Group Corp., a publicly-held corporation.

Respectfully Submitted

Dated: New York, New York.
May 27, 2011

MANATT, PHELPS & PHILLIPS, LLP

By: Joanna R. Helferich

ROBERT A. JACOBS
JOANNA R. HELFERICH
7 Times Square, 23rd Floor
New York, NY 10110
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Attorneys for Plaintiff
Nonesuch Records Inc.